UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

RICHFIELD HOSPITALITY, INC.
AS MANAGING AGENT FOR KAHLER
HOTELS, LLC,

Respondent, Case No. 18-CA-151245

and

UNITE HERE INTERNATIONAL UNION
LOCAL 21,

Charging Party.

RICHFIELD HOSPITALITY, INC.
AS MANAGING AGENT FOR KAHLER
HOTELS, LLC,

Respondent, Case No. 18-CA-176369

and

UNITE HERE INTERNATIONAL UNION
LOCAL 21,

Charging Party.

RESPONDENT'S MOTION TO CONSOLIDATE CASES

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OVERVIEW

The two above-referenced cases that Respondent seeks by this Motion to consolidate are so closely related that the Administrative Law Judge assigned to the second case referred to it as "the second reel of a movie."

Cases 18-CA-151245 and 18-CA-176369 involve the same parties, interdependent issues, and closely related facts. The two cases, in fact, involve the same ongoing negotiations for a successor contract to one that expired in early 2015. Exceptions are already pending in Case 18-CA-151245. Exceptions in Case 18-CA-176369 will be filed on or before July 13. For ease of administration and consistency, the Board should consider the cases and the Exceptions together, as shown below.

BACKGROUND.

UNITE-HERE Local 21 (the "Union" or "Local 21") represents a bargaining unit covering most of the hourly-wage job classifications in a group of four hotels in Rochester, Minnesota, all of which are located near the Mayo Clinic. The four hotels are the Kahler Grand, the Kahler Inns & Suites, the Marriott at Mayo Clinic, and the Residence Inn (the "Hotels"). At some point in 2013, the four hotels – then owned by Sunstone Hotel Properties – were sold to Kahler Hotels. Respondent Richfield Hospitality (as managing agent for Kahler) was retained to operate the Hotels and to employ the employees. Sunstone had entered previously into a collective bargaining agreement with Local 21, dated October 1, 2011, with a term that was to run until August 31, 2014. Richfield, upon taking on the duties of operator and employer in 2013, assumed the terms of the Sunstone collective bargaining agreement.

Shortly thereafter, in early 2014, representatives of Richfield and Kahler held several meetings with the Union's leadership. These discussions presented Richfield's goals, which

turned primarily on the labor costs of the Hotels' operations. Formal negotiations began in 2015, and 11 formal days of bargaining took place over the dates of January 20 through September 24, 2015. Contention arose around Richfield's desire to bring wages into line with its competition in the area, particularly with respect to the banquet servers, but in other departments as well. Richfield's wage proposal accordingly reflected different terms for each employee, which it expressed both in pie charts reflecting the total cost to the Hotels for each employee, and in a spreadsheet that clearly set forth its proposal with respect to the remuneration of each employee.

On the eighth day of the 2015 bargaining, March 24, 2015, Richfield made a "last, best, and final proposal" incorporating both a change to the method of paying banquet servers (wage only, similar to other hotels in the area, instead of wage plus a percentage of the banquet service charge), and the specific proposals for existing and new-hire hotel employees. The parties did meet several times thereafter, including a meeting in September 2015 that was requested by Richfield.

The Union filed an Unfair Labor Practice charge alleging bad-faith bargaining, primarily based on the assertion that the contract proposal was "obscure and contradictory", and that Richfield refused to answer questions about it. A Complaint and Amended Complaint were filed thereafter in Case No. 18-CA-151245.[1] The General Counsel never alleged "surface bargaining", however, and acknowledged on several occasions during the hearing that it was not an allegation in the case.

Administrative Law Judge Sharon Steckler concluded that Richfield's refusal to meet after September 24 absent some movement from the Union reflected bad faith bargaining, and that

[1] There were also a few alleged 8(a)(1) violations, which do not have direct bearing on the bad-faith bargaining allegations.

Richfield had failed to provide certain information regarding health insurance. She also found that pie charts utilized by Respondent in the 2015 negotiations were confusing, and that they did not answer the questions the Union asked.

However, as shown in the Exceptions filed in the first case, 18-CA-151245, a spreadsheet, not the pie charts, was the primary vehicle by which Richfield expressed its wage-proposal offer. Testimony from Union negotiator Martin Goff in the second case, 18-CA-176369, made it abundantly clear that the Union understood this spreadsheet, and consequently understood Richfield's wage offer, in *both* 2015 *and* in 2016. Notably, the second ALJ, contrary to the first ALJ, made an express finding that Richfield's wage offer was exceptionally clear. The facts supporting this finding are applicable to both the 2015 negotiations and the 2016 negotiations.

Following the hearing in the first case, the parties met again in 2016 to resume the same collective bargaining negotiations. After one meeting in February, and a series of written communications prior to and after that meeting, the Union proceeded to ignore – between the dates of March 25 to May 5 (41 days) – multiple requests by Richfield for another meeting. Not until Richfield finally gave notice of its intent to partially implement on May 16, 2016, its last proposal from over one year earlier (the March 24, 2015 last, best & final), did the Union finally respond. The Union proposed dates to meet, to which Richfield responded by asking if the Union had any proposals to make. After a series of communications, the parties finally met on June 7 and discussed the parties' respective proposals. Agreement on some minor issues was reached, and the Union made some oral proposals. Richfield's counsel followed with a letter rejecting the Union's proposals as too expensive and notifying the Union of the implementation of two additional elements of Richfield's last offer.

The Union again filed ULPs, and a Complaint issued on July 30, 2016, in Case No. 18-CA-176369, this time alleging that Richfield had engaged in surface bargaining. The Complaint explicitly described the ALJ's decision in Case No. 18-CA-151245, and was based in part on Richfield's statements that the wage proposal it made in March of 2015, discussed at length in the latter decision, was its "last, best and final" offer on wages.

A different ALJ, Keltner Locke, heard testimony on this second Complaint. Importantly, he relied in several places on conclusions drawn by ALJ Steckler in her decision, finding that Richfield had committed unfair labor practices, even though he acknowledged that Exceptions had been filed to those conclusions. He explained, at page 17 of his decision:

> For clarity, it may be helpful to note that the present decision somewhat resembles the second reel of a movie. The 'first reel,' Judge Steckler's decision, focused on Respondent's bargaining in 2015. … In the present decision, the 'second reel' of the movie begins with [the February 25, 2016] bargaining session.

Judge Locke "refused to credit" the testimony of Union negotiator Martin Goff that he did not understand Richfield's wage proposal, stating, "Goff demonstrated that he fully understood the information on the spreadsheet," and stated further: "The entries were so clearly labeled and easy to understand that the spreadsheet needed no one to explain it. ... The spreadsheet, not the pie charts, memorialized the Respondent's proposal and the meaning of this document speaks with crisp clarity." Locke Decision at pp. 34-35. Although Judge Locke agreed that the wage proposal itself was neither unlawful nor unclear, he concluded that Richfield's refusal to meet further, in the absence of further proposals from the Union, reflected an intent not to reach agreement, and found that Richfield had engaged in surface bargaining.

Respondent shall vigorously dispute that conclusion in the Exceptions it will file on or before July 13. Meanwhile, however, it is apparent that in order for the Board to consider the Exceptions to both decisions, it is necessary for the Board to consider the negotiations between

these parties in their totality, rather than arbitrarily separated by year.

ARGUMENT.

Consolidation is appropriate where cases involve the same parties and issues. *See, e.g., 55 Liberty Owners Corp*., 318 NLRB 308 (1995); *Connecticut Light & Power Co*., 222 NLRB 1243 (1976) ("Since the cases contain common issues, we find that administrative efficiency dictates that the two cases be consolidated."); *Malcolm X Center for Mental Health, Inc*., 222 NLRB 944, 944 n.2 (1976) ("The two cases are hereby consolidated for decision and further action as they raise the same issues and appropriate resolution of these issues can only be accomplished through consolidation."); *Woodstock Mfg. Co., Inc*., 116 NLRB 389, 389 n.1 (1956) ("Although these cases were heard separately, they are hereby consolidated for purposes of decision because of common issues."). The Board may consolidate cases "to avoid unnecessary costs and delay" in effectuating the purposes of the Act. *Central Distributors, Inc*., 266 NLRB 1021, 1021 n.2 (1983).

Consolidation is appropriate here, where the two cases involve the same employer, the same union, the same facility, and the same bargaining unit, and the parties in both cases are even still trying to negotiate the first contract. Moreover, Judge Locke explicitly grounded many of his conclusions on the findings of Judge Steckel – for example, that Respondent failed to provide information about health insurance that the Union had requested, and that an alleged remark made by Respondent representative Bill Dwyer was a threat "in light of" Judge Steckel's findings that unfair labor practices had been committed. Consolidation will allow the Board to consider the Exceptions in both cases in the context of the entire bargaining relationship between the parties, and to address and resolve at the same time all issues surrounding the parties' negotiations.

CONCLUSION.

In light of the foregoing, Respondent respectfully requests that the Board consolidate cases 18-CA-151245 and 18-CA-176369.

Dated this 3rd day of July, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Respondent's Motion to Consolidate Cases was electronically filed with Region 18 and the Office of the Executive Secretary using the NLRB's Filing System at www.nlrb.gov and was sent to the following via email and regular mail as follows:

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This 3rd day of July, 2017

/s/ Anne-Marie Mizel

Anne-Marie Mizel